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UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

Wendy Dayley, an individual,

Plaintiff,

vs.

LVGV, LLC, a Nevada Limited-Liability Company
d/b/a M Resort Spa and Casino; Does 1-20,
inclusive; and Roe Business Entities 1-10, inclusive,

Defendant.

Case No.: 2:23-cv-00456-CDS-EJY

**Stipulation and Order to Extend
Discovery (Second Request)**

The parties propose a revised discovery scheduling order, as described below.

I. Summary of Discovery Completed

The Rule 26(f) conference was held on April 27, 2023. Following the Rule 26(f) conference, the proposed Discovery Plan and Scheduling Order was filed on May 1, 2023 and approved by this Court on May 1, 2023. Plaintiff served initial disclosures on May 12, 2023 and Defendant served initial disclosures on April 28, 2023. Plaintiff served her first and second supplemental disclosures on June 2, 2023 and June 14, 2023, respectively.

On May 3, 2023, Defendant served requests for production of documents and interrogatories on Plaintiff. Plaintiff timely served her written responses to the discovery requests on June 2, 2023. On July 5, 2023, Plaintiff served requests for production of documents, requests for admissions and interrogatories on Defendant.

1 On July 17, 2023, Plaintiff noticed the deposition of Defendant's employee, Mr. Ronald
2 Luevano. Mr. Luevano's deposition subsequently took place on August 11, 2023.

3 On July 19, 2023, Plaintiff noticed the deposition of Defendant's FRCP 30(b)(6)
4 representative, with the deposition originally set to take place on August 28, 2023. Counsel for both
5 parties met and conferred multiple times, on August 2, 2023, August 7, 2023, and August 10, 2023,
6 in order to discuss the proposed FRCP 30(b)(6) deposition topics. On August 22, 2023, following
7 an impasse on several deposition topics, Defendant filed its Motion for Protective Order re 30(b)(6)
8 Topics. On August 31, 2023, Plaintiff filed their Opposition to Defendant's Motion for Protective
9 Order re 30(b)(6) Topics. On September 12, 2023, Defendant filed its Reply in Support of Motion
10 for Protective Order re 30(b)(6) Topics. A hearing regarding Defendant's motion was subsequently
11 scheduled to take place on October 12, 2023. Following oral argument, the motion was granted in
12 part and denied in part. On October 19, 2023, Plaintiff re-noticed the deposition of Defendant's
13 FRCP 30(b)(6) representative, with the deposition currently set to take place on November 20, 2023.

14 On July 26, 2023, Plaintiff noticed the deposition of Defendant's former employee, Mr.
15 Karen Patel. Mr. Patel's deposition was originally scheduled to take place on August 15, 2023, but
16 was subsequently rescheduled for and eventually conducted on August 21, 2023.

17 On September 5, 2023, Defendant first contacted Plaintiff about requesting her to attend an
18 FRCP 35 examination by a neuropsychologist, in order to address Plaintiff's claims about having
19 sustained a traumatic brain injury as a result of the subject incident. That same day, in response to
20 Defendant's inquiry, Plaintiff, consistent with the newly passed law regarding litigation
21 examinations, AB 244, requested that the proposed FRCP 35 examination be video recorded and
22 have an observer present. The parties have continued to remain in communication about the
23 proposed FRCP 35 examination, while Defendant attempted to identify a neuropsychologist who
24 would agree to allow the examination to be video recorded and observed, pursuant to the
25 requirements of AB 244.

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II. Discovery Remaining

The parties anticipate completing the following discovery:

1. Production of additional documents being obtained from Plaintiff's providers;
2. Site inspection of the subject premises;
3. Deposition of LVGV, LLC's FRCP 30(b)(6) designees;
4. FRCP 35 examination of the Plaintiff;
5. Deposition of Plaintiff;
6. Depositions of fact witnesses;
7. Third party discovery, including any additional subpoenas to be issued;
8. Expert report disclosures – initial and rebuttal; and
9. Depositions of Experts.

III. Why the Remaining Discovery Could not be Completed

The parties have been actively working together to engage in discovery and move this matter forward. The parties also identified early on that the issues in dispute for this matter were of an intricate nature, and would require a considerable amount of discovery to prepare for initial expert disclosures.

The parties' combined motion work concerning Defendant's Motion for Protective Order re 30(b)(6) Topics needed to be resolved before Plaintiff could have an opportunity to conduct the requested FRCP 30(b)(6) deposition of Defendant's representative. The parties have since resolved these issues and the 30(b)(6) deposition is now scheduled to take place on November 20, 2023, nearly three (3) months after the original noticed deposition date.

In addition, despite the parties' continued efforts to coordinate the proposed FRCP 35 examination of Plaintiff, Defendant has been unable to identify a neuropsychologist that would be agreeable to Plaintiff's request to have the FRCP 35 examination conducted while being video recorded and observed pursuant to AB 244. The result of which is that the parties now anticipate additional motion work being required to resolve this issue before the parties can proceed forward with the remaining discovery in this case. The parties understand that the anticipated timeline for briefing to be completed and for Defendant's planned motion to be heard will undoubtedly surpass

the remaining discovery deadlines that are currently in place, and thereby necessitate the need for additional time to complete the remaining discovery in this case.

The parties have submitted the instant stipulation and order just short of three (3) months before the current discovery cut-off date of January 17, 2024, which is well within the 21 days required by LR 26-4.

IV. Proposed Schedule for Completing All Remaining Discovery

Pursuant to LR 26-4, the parties propose to extend the current deadlines and jointly submit the following to the Court:

	Current Deadline	Proposed Deadline
Initial Expert Disclosures & Interim Status Report	November 16, 2023	March 15, 2024
Rebuttal Expert Disclosures	December 18, 2023	April 16, 2024
Discovery Closes	January 17, 2024	May 16, 2024
Dispositive Motions	February 16, 2024	June 17, 2024
Pre-Trial Order, if no Dispositive Motions	March 18, 2024	July 16, 2024

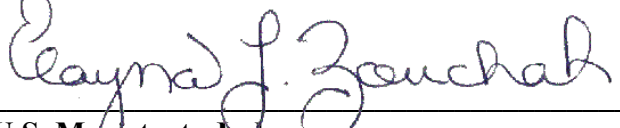
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IT IS SO ORDERED; provided, however, that the parties are advised that Fed. R. Civ. P. 35 is governed by federal, not state law. *Freteluco v. Smith's Food and Drug Centers, Inc.*, 336 F.R.D. 198, 2023-03 (D. Nev. 2020).



U.S. Magistrate Judge

~~D~~**Dated: November 7, 2023**